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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Stefan Ganzoni

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466 7590 10/01/2009

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EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

10/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,700	Applicant(s) GANZONI ET AL.	
	Examiner ALISSA J. TOMPKINS	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/7/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims a “so-called floating mesh pattern” and a “so-called woven mesh pattern,” however the applicant has not claimed enough structure to define the language. It is unclear what the applicant is trying to claim. If the applicant is claiming a knitted structure, how can one area be woven? These limitations have therefore not been given weight.

Regarding claim 5, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 5 recites the limitation “the base synthetic textile material” in lines 5-6. There is insufficient antecedent basis for this limitation in the claim. Claim 5 has therefore been rejected as best understood by the examiner.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims a “so-called

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alternative knitted heel,” but offers no additional structure. What does this mean?

What structure does this have? Claim 6 has been rejected as best understood by the examiner.

Drawings

The examiner would like to note that there were no drawings filed with this application. Drawings are deemed necessary in this application so that the invention can be clearly understood. All claimed subject matter should be presented in the drawings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zens (U.S. 4,172,456). Zens discloses a support article or under-article that is capable of being used alone or under a support article while in direct contact with the skin of the wearer. The article is essentially knit and in as best understood by the examiner has at least two different mesh structures. A first structure for a

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first zone 4 of the article extends from the end intended for the toes to a level of the ankle bones of a wearer. This zone consists of a fabric constructed with a conventional jersey hosiery stitch made up of base yarn 6, which is conventionally made of nylon, cotton, etc. This zone is provided with a one-way stretch in a circumferential direction so as to be capable of exerting a compressive force around the wearer's leg. The one-way circumferential stretch is provided by elastomeric yarn 11 which is laid-in sometimes referred to as floated, in the jersey stitch (Column 2, 30-45). The outer surface of this zone is therefore considered to be smooth. A second structure for a second zone 3 extends upward from the ankle area in a direction opposite the wearer's toes. This zone is knitted as best understood using a woven mesh pattern. It is noted that the applicant claims a dtex range for the second zone but offers no criticality for the range in the specification. The support article of Zens provides a compressive force around the wearer's leg varying from a maximum in the first zone 4 working its way to a minimum near open end 16. Therefore the second zone affords a lighter compression for the second structure. Therefore the structure of Zens is considered to meet the dtex range limitations as claimed in claim 1.

As for claims 2 and 3, Zens mentions using nylon in the first zone 4. Nylon is a synthetic textile material that is can have a smooth surface. Nylon is also a polyamide. The applicant claims a "preferably flat synthetic filament, untextured and preferably in combination with elastothane." The term

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"preferably" does not positively recite these features. These features therefore do not have to be shown in the prior art.

As for claims 4 and 5, the article of Zens is conventionally made up of nylon, cotton, etc. Figure 3 represents the knit structure for the second structure. The base yarn 14 which may be composed of cotton does not account for more than 50% of the second zone and therefore would not comprise more than 50% by weight.

As for claim 6, the claim is rejected as best understood by the examiner. It is noted that the foot area of the article is made of a synthetic material

As for claims 7 and 8, both claims contain functional limitations. These claims do not require any structural limitations. The prior art of Zens meets the previously claimed structural limitations and is therefore capable of performing in the manner claimed.

As for claims 9-12, Zens discloses an article of apparel that may be worn as a stocking or an under stocking, tights or under tights, legging or under legging, or a sock or under sock.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Teichmann (U.S. 1,724,784), Moser (U.S. 5,417,091), Vogt (U.S. 1,708,342), Carmer (U.S. 1,898,001), and Gardon-Mollard (U.S. 6,371,933) show socks/stockings.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA J. TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/
Examiner, Art Unit 3765

/GARY L. WELCH/

Supervisory Patent Examiner, Art Unit 3765